

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

KEN PAXTON, in his official capacity as §
Attorney General of Texas, §
DAVID SCHNITZ, §
TRACY MARTIN, and §
FLOICE ALLEN, §
Plaintiffs, §
§

vs. §

Civil Action No. 4:22-cv-00143-P

GARY M. RESTAINO, in his official §
Capacity as Acting Director, Bureau of §
Alcohol, Tobacco, Firearms and Explosives, §
Defendant. §

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO DISMISS

Plaintiffs Ken Paxton, in his official capacity as Attorney General of Texas, David Schnitz, Tracy Martin, and Floice Allen file this Response to Defendant's Motion to Dismiss.

As set forth more fully in the brief filed in support of this response, Defendant's motion to dismiss should be denied because (I)(A) under the current pleadings, the Court has jurisdiction over all three Counts under the *Enochs* exception; (I)(B) BATFE's AIA defense does not apply to Count I or Count III because those counts do not challenge the assessment or collection of taxes; and (II) Texas has standing, but the Court need not decide that issue because the other Plaintiffs have standing.

For the reasons discussed here and in Plaintiffs' brief in support, the Court should deny Defendant's Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

We certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on May 17, 2022.

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